

# STATE OF COLORADO

**GENERAL SUPPORT SERVICES  
DIVISION OF FINANCE AND PROCUREMENT  
OFFICE OF THE STATE CONTROLLER**

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TO: State Controller Contract Delegates  
Chief Financial Officers and Controllers  
Purchasing Directors

FROM: Arthur L. Barnhart *ALB*  
State Controller

DATE: April 21, 2000

SUBJECT: *Executing Federal Sub-Recipient Grant Contracts*

Attached for your information and implementation is a new State Controller's Office (SCO) policy, *Federal Sub-Recipient Grant Contracts*. This new SCO policy was specifically developed with input from state agencies and institutions to provide guidance to all state agencies and institutions when reviewing and approving Federal sub-recipient grant contracts.

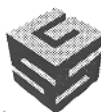
Hopefully, this new SCO policy will eliminate a majority of the questions and concerns relating to whether a Federal sub-recipient grant contract is merely late or a violation of CRS 24-30-202 has occurred. Please review this new SCO policy and discuss it with the appropriate members of your state agency or institution staff.

Should you have questions concerning this new SCO policy, please contact Phil Holtmann in the SCO at 303-866-3809. Thank you.

Attachments

H:\IVY\Contract\Policies\Late Grant - Memo.doc

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# STATE CONTROLLER POLICY

## *Federal Sub-Recipient Grant Contracts*

The following policy was adopted to give guidance to state agencies when processing Federal sub-recipient grant contracts.

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### Background

There has always been confusion as to whether a grant contract was simply late, or whether a violation of CRS 24-30-202 had occurred. State controller delegates were not allowed to execute grant contracts that were late. The state agency was required to send the grant to the State Controller's Office with a letter explaining the reason the contract was late. The state controller, after reviewing the circumstances, would determine final disposition of the grant contract.

### Purpose

The purpose of this policy is to simplify and expedite the approval process for federal sub-recipient grant contracts and give state controller delegates the authority to execute late federal sub-recipient grant contracts, under certain conditions.

### Applicability

This policy is not applicable to grant contracts that are in violation of CRS 24-30-202. This policy **applies only** to federal sub-recipient grant contracts that meet one of the following conditions:

1. **The grant contract is for a new program authorized by law and where an advice of award has been received.** The prices or rates of payment are established by law, **or** determined by a formula established by law, **or** otherwise known and agreed to by the parties prior to the start of performance, **or** the contract contains a provision that clearly notifies the sub-recipient that no reimbursements or payments will be made unless Federal funds are received.
2. **The grant contract is for a preexisting program.** The grant contract is for the continuing distribution of federal funds for an ongoing program.

This policy does **not apply** to grant contracts for:

- A. **Personal services or**
- B. **Construction.**

# STATE CONTROLLER POLICY

## Definitions

**For the purpose of this policy, the following definitions are used:**

**CRS 24-30-202 (2)** - The requirements of CRS 24-30-202 (2) in essence, require that an appropriation exists for the intended purpose, the prices or rates are fair and reasonable, and that the expenditure does not exceed the remaining unencumbered balance in the allotment.

**Advice of award** – A formal notification from the Federal government stating that the grant application has been accepted and will be funded.

**Grant contract** - A formal agreement transferring funds between two entities, either public or private, wherein the benefits provided by the funds are derived by the receiving entity or citizens served by the receiving entity. The entity providing the funds receives no direct benefit from the use of the funds and typically the only deliverable required by the receiving entity is a report. Grants include *purchased service* contracts as defined in CRS 24-50-102 (3).

**Notice of award or funding letter** – A formal notification from the Federal government stating the actual dollar amount of the grant, the performance period, and other pertinent information.

## Policy

### ONLY AN ADVICE OF AWARD HAS BEEN RECEIVED

When only an advice of award has been received and no disbursement of funds has been made and the requirements of CRS 24-30-202(2) have been met, the state controller or delegate may execute the grant contract only under one of the following conditions.

1. The contract is a continuation of a previous grant contract. The contract being processed meets the historical relationship of the previous grant contract and the program must be continued to meet the needs of the citizens of the state. In some of these instances, federal spending authority is delayed and is often not known until well after the start of the federal fiscal year. In these cases the state controller or controller delegate may approve the Grant Contract retroactively upon receipt of federal funding.
2. The contract is for a new program and not a continuation of a previous grant contract. The contract being processed has the prices and rates established by law and only the amount of funding is in question. The state agency may, after verifying that federal funding has been requested for the program, send the new grant contract out for review and signature, subject only to the availability of federal funding.

The state has the legal authority to receive and expend federal funds for the purpose outlined in the new grant contract and the state is essentially only allowing performance of a critical federal program at minimal risk to the state. Only the sub-recipient and the federal government are at risk if the program is not funded and the contract contains the necessary language to notify the sub-recipient of this risk.

In either case, if the grant award allows pre-award costs or performance by the sub-recipient and the contract contains language that indicates that the contract is retroactive the state controller or delegate may execute the contract.

# STATE CONTROLLER POLICY

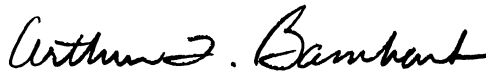
## A NOTICE OF AWARD OR FUNDING LETTER HAS BEEN RECEIVED

When a notice of award or funding letter has been received and no disbursement of funds has been made, the state controller or delegate may execute a federal sub-recipient grant contract under one of the of the following conditions.

1. The requirements of CRS 24-30-202(2) are met, the grant contract was forwarded to the sub-recipient in a timely manner prior to the award date, and a reasonable effort was made by the agency to have the grant contract signed and returned prior to the award date. If the approval is based on this criteria the state controller delegate must document the contract file as to the effort made by the agency to timely process the contract. Continuing occurrences of late contracts may require the state agency's contract administer to develop internal control procedures or adopt new internal controls in order to prevent these problems from recurring.
2. The requirements of CRS 24-30-202(2) are met, the agency and the sub-recipient have already agreed to the scope of services, and the agency and the sub-recipient execute a contract in a timely manner after the notice of award is received.
3. The requirements of CRS 24-30-202(2) are met, the notice of award allows pre-award costs or performance by the sub-recipient, and the contract contains language that indicates the contract is retroactive.

### Statutory Violations

If a disbursement of funds has occurred prior to the execution of the grant contract by the state controller or delegate, there is a violation of CRS 24-30-202. In these instances, the state agency's chief fiscal officer must comply with the state controller's July 12, 1999 policy on *Managing Contracts that Violate State Statute*.



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Arthur L. Barnhart  
State Controller